

REMARKS

Original claims 1-18, as well as original claims 19, 21-23, 31-33, and 38, have been canceled herein. New method claim 40 has been added. Support for this amendment can be found in the specification as filed at, *inter alia*, page 7, line 27 – page 8, line 15; page 9, line 26 – page 10, line 5; and page 11, lines 6-15. Claims 20, 24-30, 34-35, and 39 have been amended to depend from new claim 40. Claims 20, 24-30, 34-37 and 39-40 are now pending.

No new matter is added by these Amendments, and Applicants respectfully request entry thereof.

I. Claim Amendments

Applicants would first like to point out that all previously pending article *i.e.*, carpet, claims have been canceled herein. The remaining claims specifically recite, *inter alia*, a method of manufacturing a carpet, wherein the carpet has a thermoplastic polymer layer affixed to a woven secondary backing, and wherein the carpet has a decreased coefficient of friction over a carpet not having such a thermoplastic polymer layer affixed thereto.

II. Rejections Under 35 U.S.C. § 102(b)

In the Office Action, original claims 1-7, 9, 10, 12-17, 19-21, 24-27, 29, 30, and 32-37 were rejected under 35 U.S.C. §102(b) as being anticipated by WO 96/22414 issued to Materniak *et al.* (“Materniak *et al.*.”) As noted, originally filed article claims 1-7, 9, 10 and 12-17 have been canceled. Further, previously pending method claims 19, 21-22, and 32-33 were among the claims canceled by the present amendment. Applicants address below the applicability of Materniak *et al.* to new claim 40 and those claims depending therefrom, namely claims 20, 24-30, 34-37 and 39.

While Materniak *et al.* does disclose a carpet having a coated secondary backing, the coating therein is not one of the specifically recited thermoplastic polymers. Rather, the coatings therein are latexes. The latexes therein are not extruded onto the secondary backing. Rather, the coatings therein are applied *via* “various means, including foaming, spraying, or padding methods.” (*See* Materniak *et al.*, page 9, lines 10-11.) Since Materniak *et al.* does not disclose the extrusion aspect recited in new method claim 40, this reference does not anticipate the claimed invention for at least this reason.

Applicants note that the presently claimed methods use the transitional phrase “consisting (or “consists”) essentially of” in relation to both the recited method and the thermoplastic polymers used therein. As such, the claimed invention necessarily excludes elements that would materially affect the basic and novel characteristics of the invention. (*See* M.P.E.P. § 2111.03.) As would be recognized by one of ordinary skill in the art, it would not be feasible to extrude latex emulsions onto a carpet backing, which are water based and generally of fairly low viscosity when used in textile treatments. Thus, the latex polymers of Materniak *et al.* could not be used in the methods of the present invention without materially affecting the basic and novel characteristics of the invention, that is, the claimed extrusion methods. The claimed methods are therefore not anticipated over Materniak *et al.*.

Moreover, Materniak *et al.* does not disclose in any manner that the carpets made according to the methods therein have a reduced coefficient of friction over the coefficient of friction of carpets without such coatings. Therefore, this reference does not anticipate the claimed invention for at least this additional reason.

Applicants note that the Office Action contends that the polymer coating on the backside of Materniak *et al.*’s carpets would inherently reduce the coefficient of friction of the backside of the carpet due to an “increased smoothness.” The Office Action does not provide any factual basis for this conclusion. As such, the allegation of inherency is improper. *See Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (stating that an inherency rejection must

provide “a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.”)

In any event, the application of a latex polymer will not necessarily make the surface to which it is applied “smoother,” as is contended in the Office Action. Rather, a latex polymer will conform to the general texture of the surface to which it is applied. For example, when dried, a latex paint will take on the generally texture of the surface below: latex paint applied to a smooth surface will provide a smooth textured surface; latex paint applied to a rough surface will exhibit the underlying rough texture of the surface below. The smoothness or roughness of a latex-coated surface will depend upon a number of factors including, but not limited to, the roughness of the surface to which the latex is applied, the type of latex polymer and the thickness of the coating. Thus, as one example of this phenomenon, a rough concrete surface to which a latex polymer has been applied (such as with a paint) will still generally be rough, that is, have a high coefficient of friction. Therefore, Applicants submit that it does not “necessarily flow” that the latex coated secondary backings of Materniak *et al.* will be smoother than the uncoated secondary backings therein.

In light of the above, the presently claimed methods of making a carpet are not anticipated by Materniak *et al.*

II. Rejections Under 35 U.S.C. § 103(a)

Original claims 8, 18, 28 and 39 have been rejected under § 103(a) as allegedly being unpatentable over Materniak *et al.* in view of U.S. Patent No. 5,540,968 to Higgins (“Higgins”). Further, original claims 22 and 23 have been rejected under § 103(a) over Materniak *et al.* in view of U.S. Patent No. 4,844,765 to Reith (“Reith”). Additionally, original claims 11, 31 and 38 were rejected under § 103(a) in view of U.S. Patent No. 5,240,530 issued to Fink (“Fink”) and/or the cited Reith patent.

Materniak *et al.* does not suggest or motivate in any manner the decreased coefficient of friction claimed by Applicants. To the contrary, there is no mention whatsoever of the tactile properties conferred by the polymeric layers on the carpets disclosed therein. As discussed above, the allegation of inherency as stated in the Office Action is improper because a factual basis for this contention has not been presented in the Office Action. Nonetheless, as shown above, the application of a latex coating to a secondary backing will not necessarily make the surface smoother. Rather, the degree of smoothness of a secondary backing such as those in Materniak *et al.* will depend on a number of factors, none of which is considered in this reference in relation to the coefficient of friction of the resulting carpets.

Reith, Higgins and Fink do not disclose in any manner the resulting coefficient of friction of the carpets therein. Nor do these references suggest that disclose the extrusion of a thermoplastic polymer onto a secondary carpet backing. Applicants note that Higgins does not address extrusion at all. Further, none of these references considers in any manner that the properties of a carpet would be affected by the application of a thermoplastic polymer thereto.

In summary, whether taken alone or in combination, none of the references cited in the Office Action recognizes in any manner that the coefficient of friction of a carpet may be affected by the extrusion of a thermoplastic polymer to the outer surface of a secondary backing. Any attempt to assert that the claimed coefficient of friction properties of the carpets prepared by the methods herein would be a hindsight reconstruction of the invention and, as such, cannot form a proper obviousness rejection. *See In re Rouffet*, 47 U.S.P.Q.2d 1350, (Fed. Cir. 1998) (discussing improper use of hindsight reasoning in the rejection of combination of old elements as obvious.)

In light of the above, it is respectfully submitted that the presently claimed methods are not obvious in view of the prior art of record.

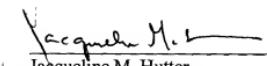
CONCLUSION

In light of the above Amendments and arguments, the claims are believed to be allowable over the art of record, and Applicants respectfully request notification of same.

Payment in the amount of \$410.00 for the request for a Two-month Extension of Time is enclosed. The payment is to be charged to a credit card and is authorized by the signed, enclosed document entitled: Credit Card Payment Form PTO-2038. No further fee is believed due. However, the Commissioner is hereby authorized to charge any fees that may be required to Deposit Account No. 14-0629.

Respectfully submitted,

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